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SUPREME COURT U.S.
MAY 9 - 2005
OFFICE OF THE CLERK

NO. 04-1085

IN THE

SUPREME COURT OF THE UNITED STATES

Stanley N. Drinkwater , Jr. — Petitioner
P.O.Box 354710 — PRO-SE
Palm Coast, Florida 32135
(386) 788-7982
Individual

V.

Parker, McCay & Criscuolo — Respondent
Three Greentree Centre Road
Route 73 and Greentree Road
Marlton, New Jersey 08053
Defendants

PETITION FOR REHEARING

PETITION FOR REHEARING
(ARGUMENTS)

1. The Courts have errored consistently through out this case. The defendant's have never directed their defense to answering the complaint .Because of this the Courts have been making their decisions on the basis of the defendants defense position , and that is to divert the Courts attention away from the plaintiff .s issues in the complaint , and it has worked for the defendant's . This is certainly not justice in any sense of the word.
2. The complaint involves two issues . Did the defendant's legally have a client after the default judgement was entered , and the period for the defendant's to appeal the judgement had expired . The defendant's did not do either of the above.
3. After the required times had expired , with no request from the defendant for an extension , the plaintiff filed for the default judgement , and the Court granted it. After the Court granted the default judgement the defendants file a motion to have the default judgement vacated, about 85 days after service of the complaint.
4. At this point the defendant's no longer have a client when filing for the motion, which in it's self

was a violation of law to permit a motion under these circumstances. Defendant's failure to timely file the notice within the required time. FAILURE TO COMPLY EFFECTIVELY FOREVER BARS an alleedly aggrieved party from seeking further relief . " In Re pfizer's Estate, 6 N.J. 233 (1951)". Alberti V. Civil Sevice Com. , 41 N.J. 147, 154 (1963) . As stated in Pfizer " [i]t is a well established principal in this State that when the time for taking an appeal has run the parties to the judgement have a vested right therein, which cannot subsequently be taken from them. . . [I]t is of the most importance that at some point judgements become final and litigations come to an end". In Re pfizer, 6 N.J. at 239, Where an appeal is not perfected within the period provided by R. 2 : 4-1 , the appeal is untimely and the Appellate Division has no jurisdiction to decide the merits of the appeal. Matter of Hill , 241 N. J. Super, 367 , 372 (App. Div. 1990) .

5. The defendant's have stated that the plaintiff was late in filing his notice of appeal, this is not true . The plaintiff was advised by the Court , not to file his appeal until the transcripts of the hearing had arrived, and to file the transcript with the appeal . However , the court advised the plaintiff to send to the Court proof that the

transcripts had been ordered and paid for, and this the plaintiff did. No violation of any type existed . and least of all a timely violation .

6. The defendant's , in their defense are fighting the very same argument that the plaintiff is, the only difference is, that the defendant.s are stating false facts to the Courts as to plaintiff not being timely with his appeal . Also , the defendant s are able to suggest such a defense,knowing it's false, as they have nothing else.Their false statements as to not being timely , are years after these same stated violations by the defendant's happened to to the plaintiff , in this same matter. How can the courts have denied the plaintiff his rights in this case , and turn around and not deny the defendants for the same reasons in the very same action. The law is clear that the motion by the defendants to vacate the default judgement is granted in error.

7. The defendants after about 80 days motioned the Court to vacate the default judgement , stating many false hoods to the Court and promising many other items , none of which were ever done. The defendant s claimed as to their false hoods to the Court this was permitted as they had absolute litigation privilege . Ericson v. Marsh & McLennan,Co .117 N.J. 539, 563 (1990). Absolute immunity privilege is necessary to permit an

their negligence in not answering the complaint for 112 days. Important to remember that these violations all took place prior to any of their motions being granted , which should not have been granted to begin with , this caused all the problems, as their alleged violations were after the fact, all their violations they claimed against the plaintiff were the results of the complaint that the Court errored on.

9. The defendants alleged that both affidavits of merit supplied by the plaintiff were not satisfactorary and did not meet the requiremenst of the N. J. Statutes , 2A : 53A-26 thru 2A : 53A-29. The defendant's in their oral and written defense stated that both Doctors affidavits of merit did not have experience in Hospital practices Administ ration ,Operations Practices.At the motion hearing , the Judge could not find their alleged statements in the statutes.However,plaintiff Attorney claimed not to have the statutes ,and the Judge went along with the defendant's regardless, he was absolutely wrong , as the statements by the defendant's did exist, see N.J. statutes in Petition for writ of certiorari pages V thru VIII. This error by the court was the cause to have the action dismissed and prevented me from having my day in Court as I am legally entittled to under our constitution.

Attorney's unfettered expression of it's legal position to the Court in advancing the interest of it's CLIENT .Defendant had no client when they cried privilege to the Court when using all their falsehoods to have the default judgement vacated. privilege is only used when defending their client. They no longer had a client for this matter,as their client that they had for this action was wiped away when the defendant s frauded their client and caused a default judgement to be entered which was a malpractice & certainly negligence on their behalf. Page #2, (court decissions) spells out very clear that " Failure to comply Effectively forever Bars an alleged aggrieved party from seeking further relief ".They had no client,which gives the defendant's no privilege or immunity and no defense .
8. The defendant s, after the defeult judgement was entered due to their negligence to their client, realized that they would be sued by their now previous clients, so they lied to the Court, alleging they still had a client to have the default judgement vacated .The only client the defendant s had was themselves , and that was only to prevent themselves from legal action from their previous client who would certainly want to recover their losses due to the action of their previous attorneys costing them a great loss in money due to

The Courts have completely ignored New Jersey Appellate Division decission , Burns V. Belafsky, 166 N.J. 466 (2001). " Where the Chief Justice Made it clear , that an Exact Precise , match between the speciality of the alleged tortfeasor & the speciality of the expert was Not Required". "What was required is a Demonstration that the Expert is qualified to supply the required Basis for the medical complaint". Both Doctors filed Affidavits of Merit . Each Doctor met every requirement of the New Jersey Statutes and more. The defendant's refused to supply any records from the Hospital . The Doctors made their reports from the documents the plaintiff was able to gather together . The defendants at no time made any type of complaint regarding the doctors or their Affidavits , their only complaint was the prefabricated requirement by the defendant's , which did not exist. See affidavits of Merit (petition for Writ of Certiorari , pages Da-10 thru Da-20) . The Courts again ignored New Jersey Appellate Division , Hubbard V.Reed, Id.at 291, where it clearly states that the action of of the Courts in permitting the defendant s to alter the New Jersey Statutes by inserting their own wording into their defense and causing the plaintiff to have his case dismissed , certainly violating

his Constitutional and legal rights. " In Hubbard V. Reed , The Appellate Division reviewed basic tenant of statutory construction , Id at 290 , and observed that " When the STATUTORY language is clear , a Court's SOLE function is to INFORCE in accordance with those terms". Id. at 291 (quoting from Philips V. Curiale, 128 N.J.,608, 618 (1992). The Court in Hubbard V. Reed then observed that a Court does not have the authority to substitute it's on ideas of what a Statute should require in the face of clear and unambiguous statutory requirements". The Courts in this action are guilty of violating this Statue.The Court Knew that the affidavits of merit were next to perfect, nothing wrong , The Courts knew that the defendant's had submitted false statements to the Court regarding medical requirements , requirements that were not a part of the statutes . The Courts knew when they dismissed my action that they were in violation of the law, many times , as the plaintiff supplied the Courts with all this information. Every action the defendant's have used in this case is an action that has been presented to the Court , after the Court had approved their violations of the law, stripping and raping the plaintiff of all his legal and Constitutional rights.I realize that I am PRO-SE in this

matter, and not a member of your Legal Fraternity. As one Justice reminded me . He never said there was anything wrong with the issues ,it was how it was presented, " the pearls of PRO-Se " This would not be PRO-SE if I could have afforded legal Council. I think what really should matter is, did the defendant s violate the law ? Is justice for all, or just for the select few? Are the PRO-SE plaintiff's handicapped ? I notice in the defendants brief to the New Jersey Appellate Court that the Exhibits presented to the Court have been reduced in size to about one fifth the normal size, so that the Court could not read it. If the defendant's felt thay were so right, why would they not want the court to read it.

10. The defendant's have made a case out of saying that PMC was not a party and could only act in the underlying action on behalf of it's client. However,after failure to comply within the stated times effectively forever bars the defendant's from seek-further relief. Alberti V. Civil Service Com., 41 N.J. 147, 154 (1963). as stated in Pfizer, "[i]t is a well established principal in this State that when the time for taking an appeal has run the parties to the judgement have a vested right therein which cannot subsequently be taken from them. It is of the utmost importance that at some point judge-

ments become final & litigation come to an end".
11. The defendant's again continue to try and use such argument's as , "` West Jersey Health Systems was the party to the underly act, not PMC. This might have been true if the defendants had not violated the strict time requirement . However, when the defendant's refused to comply to the law , their clients position was no longer that of a client, but the position of a previous client with a malpractice claim against PMC and rightfully so. PMC did pull a fast one when filing the motion to vacate the judgement , knowing they were in violation of not filing timely,and were able to pull the wool over the Courts eyes.
12. The legal truth is that PMC's action in filing The motion to vacate without having a client pertaining to the complaint from the plaintiff , and caused by the defendant, must be considered Not only a serious ethic violation , this violation Was planned , they knew they were in violatIon of the law , as they tried to use it as a defense Against the plaintiff.Their legal, knowing misconduct Can not be takin lightly , needless to say to the plaintiff , but also harmful to the system.
13. The plaintiff requests that the Court reverse their decision and reinstate the default judgement.

This case by law has been denied it's day in Court. It is a very serious action .A womans life was taken from her, certainly wrongful death I do not want her violators to go unpunshed . I ask the court to give me justice , and the right to take this action to trial.

Stanley N. Drinkwater,Jr. date May 5, 2005

Stanley N. Drinkwater,Jr.
Plaintiff.

CERTIFICATION OF PLAINTIFF

STANLEY N. DRINKWATER, JR.

Plaintiff does hereby state as required by Rule 44 and Rule 29, that this rehearing Petition is in good faith , and not for delay.

Stanley N Drinkwater Jr date May 5, 2005
Stanley , N. Drinkwater, Jr.
Plaintiff